

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeenn G. Kelly.

Brooklyn Navy Yard Cogeneration Partners, L.P.	Docket Nos.	ER97-886-008 ER97-886-009
CMS Distributed Power, L.L.C.		ER00-2187-001
Delta Person Limited Partnership		ER01-138-003
Exeter Energy Limited Partnership		ER00-3039-001
Gateway Energy Marketing		ER96-795-012 ER96-795-013
Kohler Co.		ER95-1018-008 ER95-1018-009
Monmouth Energy, Inc.		ER99-1293-006
North American Energy, L.L.C.		ER02-245-001 ER06-958-000
Primary Power Marketing, L.L.C.		ER98-4333-002
SF Phosphates Limited Company, LLC		ER01-1121-001 ER01-1121-002
Thompson River Co-Gen, LLC		ER02-298-003
Tri-Valley Corporation		ER97-3428-008 ER97-3428-009
		EL05-111-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSES AND  
TERMINATING SECTION 206 PROCEEDING

(Issued June 30, 2006)

1. In this order, the Commission accepts the updated market power analyses filed by the above-captioned market-based rate sellers in response to the Commission order issued on May 31, 2005.<sup>1</sup> Additionally, this order accepts the notice of cancellation filed by North American Energy, L.L.C. (North American). This order also accepts tariff revisions filed by some of the above-captioned entities and directs certain compliance filings, as discussed below. In addition, this order terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to the above-captioned entities.

**Background**

2. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years<sup>2</sup> to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. In the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price.

3. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed market-based rate sellers, which had failed to comply with the requirement to submit an updated or revised market power analysis, to file their updated or revised market analyses within 60 days from the issuance of that order or provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date pursuant to the provisions of section 206 of the Federal Power Act (FPA) for the protection of

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<sup>1</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). As discussed below, we find that Delta Person Limited Partnership (Delta Person) was inadvertently included in the May 31 Order and we accordingly terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Delta Person.

<sup>2</sup> *See, e.g., W. Res., Inc.*, 94 FERC ¶ 61,050, at 61,247 (2001); *Entergy Serv., Inc.*, 58 FERC ¶ 61,234, at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367, at 62,209 (1990).

customers.<sup>3</sup> In the May 31 Order, the Commission also gave entities the option to file a notice of cancellation, instead of filing the updated market power analyses or providing support as to why they should not be required to do so.

4. The above-captioned market-based rate sellers filed timely updated market power analyses in response to the May 31 Order.<sup>4</sup> We herein accept their updated market power analyses and North American's notice of cancellation, and terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to these entities, as discussed below.

### **Updated Market Power Analyses**

5. On July 25, 2005, as amended on March 3, 2006 in response to a data request, Brooklyn Navy Yard Cogeneration Partners, L.P. (Brooklyn Navy Yard) filed an updated market power analysis and revised market-based rate tariff. Brooklyn Navy Yard's revised tariff includes the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>5</sup> Brooklyn Navy Yard states that it owns a 315 megawatt (MW) facility in Brooklyn, New York which is committed under long-term contract. Brooklyn Navy Yard states that because it and its affiliates have no uncommitted capacity in either New York City or the rest of the New York Independent System Operator (NYISO) market, it passes both of the Commission's screens. Brooklyn Navy Yard states that neither it nor its affiliates own or control any transmission facilities and that neither it nor its affiliates can erect barriers to entry. Lastly, Brooklyn Navy Yard states that it is not affiliated with any entity with a franchised service territory.<sup>6</sup>

6. On June 27, 2005, as amended on February 10, 2006 in response to a data request, CMS Distributed Power, L.L.C. (Distributed Power) and Exeter Energy Limited Partnership (Exeter) filed an updated market power analysis and revised market-based

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<sup>3</sup> 16 U.S.C. § 824e (2000).

<sup>4</sup> North American subsequently filed on May 9, 2006 a notice of cancellation of its market-based rate tariff.

<sup>5</sup> *Reporting Requirement for Changes in Status For Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

<sup>6</sup> We note that Brooklyn Navy Yard filed a change in status on April 22, 2004. The change in status was filed to inform the Commission of a management agreement that one of its owners entered into with PE, L.L.C. The Commission approved this arrangement in *Brooklyn Navy Yard Cogeneration Partners, L.P.*, 107 FERC ¶ 62,165 (2004).

rate tariffs. Distributed Power's and Exeter's revised tariffs include the Commission's market behavior rules<sup>7</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>8</sup> Distributed Power and Exeter are both owned by CMS Energy Corporation. Distributed Power owns two diesel generators which are currently leased under a long-term contract to Dearborn Industrial Generation, L.L.C. (Dearborn), which is affiliated with Distributed Power. Distributed Power states that these units are not connected to any external power grid. Distributed Power states that these units are utilized at the Ford Rouge Complex in Dearborn, Michigan to serve the internal needs of Dearborn, and are not capable of producing electricity for sale to any power grid. Exeter states that it owns a 26 MW generation facility in Connecticut and has provided generation market power screens for the ISO New England (ISO-NE) market. Distributed Power and Exeter state that they are no longer affiliated with any entity that owns transmission facilities. Further, Distributed Power and Exeter state that neither they nor their affiliates can erect barriers to entry. Lastly, Distributed Power and Exeter state that there are no affiliate abuse concerns because their tariffs prohibit sales to Consumers Energy Company, their affiliate with a franchised service territory.

7. On July 29, 2005, Delta Person filed an updated market power analysis supporting continuation of sales at market-based rates under a long-term power purchase agreement with Public Service Company of New Mexico (PSNM). Delta Person asks the Commission to find that Delta did not fail to submit a required updated market power analysis because the Commission never imposed such a condition in the order granting Cobisa-Person Limited Partnership (Cobisa-Person), the predecessor to Delta Person, authority to transact at market-based rates under the long-term agreement with PSNM. According to Delta Person, Cobisa-Person's (now Delta Person's) market-based rate authority under the long-term agreement with PSNM was not conditioned on filing updated market power analyses. Delta Person states that the Commission stated that "certain reporting requirements that might otherwise be required are not being required here because [Delta Person] will be selling all of the capacity and energy from its facility under a long-term contract (20 years) to PSNM, and the rate schedule (which is, in fact, the parties' contract) has been filed."<sup>9</sup> Delta Person states that these "certain reporting requirements" include the filing of an updated market power analysis. Delta Person states that it does not have a market-based rate tariff on file with the Commission. Delta

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<sup>7</sup> Only CMS Distributed Power, L.L.C., FERC Electric Tariff, First Revised Vol. No. 1, First Revised Sheet No. 1 and Exeter Energy Limited Partnership, FERC Electric Tariff, First Revised Vol. No. 1, First Revised Sheet No. 1 are accepted.

<sup>8</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

<sup>9</sup> *Cobisa-Person Ltd. P'ship.*, 83 FERC ¶ 61,292 (1998).

Person further states that it does not make sales of energy or capacity to any entity other than PSNM.

8. On July 29, 2005, as amended on April 10, 2006 in response to a data request, Gateway Energy Marketing, L.P. (Gateway) filed an updated market power analysis and revised market-based rate tariff sheets. Gateway's revised tariff includes the Commission's market behavior rules<sup>10</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>11</sup> Gateway states that it is a wholly-owned subsidiary of Gateway Science & Engineering (Gateway Science), a privately-held California corporation. Gateway states that it does not own or control any interests in generation. Gateway also states that neither it nor its affiliates own or control transmission facilities. In addition, Gateway states that neither it nor its affiliates own or control resources that could be used to restrict the market entry of competing suppliers. Lastly, Gateway states that neither it nor its affiliates are affiliated with an electric utility with a franchised service territory.

9. On July 13, 2005, as amended on April 27, 2006 in response to a data request, Kohler Co. (Kohler) filed an updated market power analysis and revised market-based rate tariff sheets. Kohler's revised tariff<sup>12</sup> includes the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>13</sup> Kohler states that neither it nor its affiliates own or control any interests in generation or transmission facilities. Kohler states that it owns Brown Industrial Gas, Inc. (Brown), a natural gas gathering and production company in central Texas. Kohler states that all the natural gas produced and gathered by Brown is used by Kohler in its manufacturing facility. Kohler states that it does not own or control fuel supplies, unique land sites, or other inputs to electric power generation that could be used to prevent other competitors from entering the market. Lastly, Kohler states that it is not affiliated with an electric utility with a franchised service territory.

10. On June 9, 2005, as amended on March 3, 2006 in response to a data request, Monmouth Energy, Inc. (Monmouth) submitted an updated market power analysis. Monmouth owns a 10 MW generation facility in New Jersey and is an affiliate of Duquesne Light Company (Duquesne). Monmouth has submitted a generation market power analysis for the PJM Interconnection, L.L.C. (PJM) market which indicates it lacks

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<sup>10</sup> Only Gateway Energy Marketing, L.P., FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 1 is accepted.

<sup>11</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

<sup>12</sup> Kohler Co., First Revised FERC Rate Schedule No. 1, Original Sheet Nos. 1-2.

<sup>13</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

generation market power. Monmouth further states that Duquesne's transmission facilities are operated pursuant to the PJM open access transmission tariff (OATT). Monmouth also states neither it nor its affiliates control sites for new generation, fuel supply, or construction firms serving power generators. Lastly, Monmouth states it sells to an unaffiliated utility in New Jersey and makes no sales to its affiliated franchised utility, Duquesne. Monmouth notes that the Commission has found that Duquesne satisfied the standard that the Commission has applied in past cases for waiver of the code of conduct requirement and the affiliate sales prohibition because Duquesne's retail customers can choose an alternative supplier for their generation requirements based on Pennsylvania's retail choice program and Duquesne has no wholesale generation customers. Monmouth states that this finding is equally applicable to Monmouth.<sup>14</sup>

11. On July 29, 2005, as amended on April 10, 2006 in response to a data request, Primary Power Marketing, L.L.C. (Primary Power) filed an updated market power analysis and revised market-based rate tariff sheets. Primary Power's revised tariff removes the Commission's market behavior rules and adds the Commission's change in status reporting requirement.<sup>15</sup> Primary Power is a Michigan limited liability company owned 75 percent by Primary Power Management and Development, Inc., d/b/a Primary Power International (Primary International) and 25 percent by Mr. Rolf Peterson. Primary International indirectly owns a total of 37.4 MW in the Midwest Independent System Operator Inc. (Midwest ISO) market and a 20 MW facility in the Imperial Irrigation District control area. Primary Power has submitted a generation market power analysis for the Midwest ISO market and the Imperial Irrigation District control area that indicates it lacks generation market power. Primary Power also states that neither it nor its affiliates own or control transmission facilities other than those to interconnect to the grid. In addition, Primary Power states that neither it nor its affiliates own or control resources that could be used to restrict the market entry of competing suppliers, marketers or brokers. Lastly, Primary Power states that neither it nor its affiliates are affiliated with an electric utility with a franchised service territory.

12. On August 1, 2005, as amended on February 14, 2006 in response to a data request, SF Phosphates Limited Company, LLC (SF Phosphates) submitted an updated market power analysis and revised market-based rate tariff. SF Phosphates' revised tariff

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<sup>14</sup> See *Sunbury Generation, LLC*, 108 FERC ¶ 61,160 (2004).

<sup>15</sup> Primary Power Marketing, L.L.C., First Revised Rate Schedule FERC No. 1, Substitute Sheet Nos. 2-3 and Original Sheet No. 4.

has been designated and paginated in compliance with Order No. 614<sup>16</sup> and includes the Commission's market behavior rules,<sup>17</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>18</sup> SF Phosphates owns an 11.4 MW generation facility in the PacifiCorp-East control area and has submitted a generation market power analysis for that control area that indicates it lacks generation market power. SF Phosphates states that neither it nor its affiliates own or control any transmission facilities. SF Phosphates also states that neither it nor its affiliates can erect barriers to entry into wholesale power markets. In addition, SF Phosphates states that it is not affiliated with any entity that has a franchised service territory.

13. On May 30, 2006, as amended on January 12, 2006 in response to a data request, Thompson River Co-Gen, LLC (Thompson) filed an updated market power analysis and revised market-based rate tariff. Thompson's revised tariff<sup>19</sup> includes the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>20</sup> Thompson owns a 12 MW wood and coal-fired generating facility in Montana and has submitted a generation market power analysis for the North Western Energy control area that indicates it lacks generation market power. Thompson states that it does not own or control any transmission facilities. Thompson also states that it cannot erect barriers to entry into wholesale power markets. In addition, Thompson states that is not affiliated with any entity that has a franchised service territory.

14. On June 22, 2005, as amended July 29, 2005, and February 13, 2006 in response to a data request, Tri-Valley Corporation (Tri-Valley) filed an updated market power analysis and revised market-based rate tariff. Tri-Valley's revised tariff includes the Commission's market behavior rules<sup>21</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>22</sup> Tri-Valley is a publicly-traded oil and

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<sup>16</sup> *Designation of Elec. Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (Apr. 7, 2000), FERC Stats. & Regs. ¶ 31,096 (2000) (Order No. 614).

<sup>17</sup> Only SF Phosphates Limited Company, LLC, First Revised Rate Schedule FERC No. 1, First Revised Sheet Nos. 1 & 3 are accepted.

<sup>18</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

<sup>19</sup> Thompson River Go-Gen LLC, Revised Schedule FERC No. 1, Revised Original Sheet No. 1.

<sup>20</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

<sup>21</sup> Only Tri-Valley Corporation, FERC Electric Tariff, First Revised Vol. No. 1, First Original Sheet No. 1 is accepted.

<sup>22</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

gas exploration and production company. Tri-Valley states that neither it nor its affiliates own or control any generation or transmission facilities. Tri-Valley states that it is a producer of natural gas, but that neither it nor its affiliates can erect barriers to entry. Lastly, Tri-Valley states that it is not affiliated with any entity that has a franchised service territory.

### **Notice of Cancellation**

15. On May 9, 2006, North American submitted a notice of cancellation requesting that the Commission cancel its market-based rate tariff effective July 7, 2006.<sup>23</sup>

### **Notices**

16. Notices of Brooklyn Navy Yard's filings were published in the *Federal Register*, 70 Fed. Reg. 45,382 (2005), and 71 Fed. Reg. 13,377 (2006), with interventions or protests due on or before August 15, 2005 and March 24, 2006. None was filed.

17. Notices of Distributed Power's filings were published in the *Federal Register*, 70 Fed. Reg. 42,050 (2005) and 71 Fed. Reg. 10,029 (2006), with interventions or protests due on or before August 1, 2005 and March 3, 2006. None was filed.

18. Notice of Delta Person's filing was published in the *Federal Register*, 70 Fed. Reg. 47,189 (2005), with interventions or protests due on or before August 19, 2005. None was filed.

19. Notices of Exeter's filings were published in the *Federal Register*, 70 Fed. Reg. 39,763 (2005) and 71 Fed. Reg. 10,491 (2006), with interventions or protests due on or before July 18, 2005 and March 3, 2006. None was filed.

20. Notices of Gateway's filings were published in the *Federal Register*, 70 Fed. Reg. 46,502 (2005) and 71 Fed. Reg. 21,007 (2006), with interventions or protests due on or before August 19, 2005 and May 1, 2006. None was filed.

21. Notices of Kohler's filings were published in the *Federal Register*, 70 Fed. Reg. 42,543 (2005) and 71 Fed. Reg. 27,490 (2006), with interventions or protests due on or before August 3, 2005 and May 18, 2006. None was filed.

22. Notice of Monmouth's filing was published in the *Federal Register*, 71 Fed. Reg. 13,831 (2006), with interventions or protests due on or before March 24, 2006. None was filed.

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<sup>23</sup> North American Energy, LLC, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 (cancels FERC Electric Tariff, Original Volume No. 1).



23. Notices of Primary Power's filings were published in the *Federal Register*, 70 Fed. Reg. 47,189 (2005) and 71 Fed. Reg. 21,007 (2006), with interventions or protests due on or before August 19, 2005 and May 1, 2006. None was filed.

24. Notices of SF Phosphates's filings were published in the *Federal Register*, 70 Fed. Reg. 48,118 (2005) and 71 Fed. Reg. 10,492 (2006), with interventions or protests due on or before August 22, 2005 and March 7, 2006. None was filed.

25. Notices of Thompson's filings were published in the *Federal Register*, 70 Fed. Reg. 47,189 (2005) and 71 Fed. Reg. 35,884 (2006), with interventions or protests due on or before August 19, 2005 and June 20, 2006. None was filed.

26. Notices of Tri-Valley's filings were published in the *Federal Register*, 70 Fed. Reg. 39,765 (2005), 70 Fed. Reg. 46,834 (2005), and 71 Fed. Reg. 10,491 (2006), with interventions or protests due on or before July 13, 2005, August 19, 2005, and March 6, 2006. None was filed.

27. Notice of North American's notice of cancellation was published in the *Federal Register*, 71 Fed. Reg. 29,938 (2006), with interventions or protests due on or before May 30, 2006. None was filed.

### **Discussion**

28. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission, and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>24</sup> As discussed below, the Commission concludes that the above-captioned entities satisfy the Commission's standards for market-based rate authority.

29. On April 14, 2004, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>25</sup> The above-captioned entities that own generation, or are affiliated with an entity that owns generation, have prepared the pivotal supplier and the wholesale market share screens for the markets in which they are located. In addition, many of the above-captioned entities do not have and are not affiliated with an entity that has generation

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<sup>24</sup> See, e.g., *Progress Power Mktg., Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Nw. Power Mktg. Co.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>25</sup> *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

assets. The Commission has reviewed the above-captioned entities' generation market power analyses. Based on the representations of these entities, the Commission finds that the above-captioned entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

30. We note that Monmouth is affiliated with an entity that owns transmission assets, which are operated pursuant to an OATT on file with the Commission, while the remainder of the above-captioned entities do not own or control transmission facilities, other than those necessary to interconnect to the grid. No intervenor has raised transmission market power concerns with respect to these entities. Accordingly, we find that, based on their representations, the above-captioned entities satisfy the Commission's transmission market power standard.

31. Each of the above-captioned entities states that it cannot erect barriers to entry into wholesale power markets. Further, no intervenor has raised concerns regarding barriers to entry. Based on the representations of the above-captioned entities, the Commission is satisfied that these entities cannot erect barriers to entry. However, should Kohler or Tri-Valley or any of their affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of that entity's authority to sell power at market-based rates.<sup>26</sup>

32. The Commission is concerned with the potential for affiliate abuse and reciprocal dealing. Each of the above-captioned entities has stated that its filing does not raise any concern regarding affiliate abuse. No intervenor has raised affiliate abuse concerns. Based on the representations of the above-captioned entities, we find that they satisfy the Commission's concerns with regard to affiliate abuse.

33. We find herein that Delta Person was inadvertently included on the May 31 Order, and we accordingly terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Delta Person. We clarify that Delta Person's authority to transact at market-based rates under its long-term agreement with PSNM was not conditioned on the requirement that it file updated market power analyses.<sup>27</sup> Similarly, because Delta Person does not have a market-based rate tariff on file with the Commission, it is not required to submit a tariff to incorporate the change in status requirement. In the event that Delta Person seeks blanket authorization to sell power at market-based rates, the Commission will at that time require Delta Person to file an updated market power analysis every three years.

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<sup>26</sup> *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

<sup>27</sup> *Cobisa-Person Ltd. P'ship.*, 83 FERC ¶ 61,292 (1998).

34. We find that the remaining above-captioned entities satisfy the Commission's directive in the May 31 Order and meet the requirements for continued market-based rate authorization. We will therefore terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to these entities.

35. We note that North American filed a timely updated market power analysis on June 21, 2005. However, North American filed a notice of cancellation on May 9, 2006. Accordingly, we accept North American's notice of cancellation, to be effective July 10, 2006 as requested, and find that its filing satisfies the Commission's directive in the May 31 Order.

### **Change in Status Reporting Requirement**

36. As discussed above, some of the above-captioned market-based rate sellers have filed revised market-based rate tariffs to include the Commission's change in status reporting requirement, and we accept those tariff revisions herein. The change in status reporting requirement was effective March 21, 2005.<sup>28</sup>

37. Monmouth failed to revise its market-based rate tariff to include the Commission's change in status reporting requirement. Accordingly, we direct Monmouth, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include the Commission's change in status reporting requirement.

### **Market Behavior Rules**

38. Some of the above-captioned market-based rate sellers have filed revised market-based rate tariffs to include the Commission's market behavior rules. Specifically, Distributed Power, Exeter, Gateway, SF Phosphates, and Tri-Valley filed to include the market behavior rules in their market-based rate tariffs. With regard to the market behavior rules, the Commission issued an order rescinding market behavior rules 2 and 6, effective February 27, 2006, following the promulgation of new regulations prohibiting the employment of manipulative or deceptive devices or contrivances in wholesale electric and natural gas transactions.<sup>29</sup> The Commission also adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006.<sup>30</sup> As a result, the market behavior rules will no longer be part of the

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<sup>28</sup> Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005).

<sup>29</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006).

<sup>30</sup> *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006).

sellers' market-based rate tariffs. Accordingly, we do not accept the portion of the revised market-based rate tariffs filed by Distributed Power, Exeter, Gateway, SF Phosphates, and Tri-Valley that include the market behavior rules because they are unnecessary.

### **Other Reporting Requirements**

39. Consistent with the procedures the Commission adopted in Order No. 2001, the above-captioned entities are required to file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>31</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>32</sup>

40. The above-captioned entities are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

41. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 of its regulation in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>33</sup> With respect to an individual who is currently authorized to hold interlocking positions, that individual will

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<sup>31</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>32</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>33</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (Sept. 23, 2005), FERC Stats. & Regs. ¶ 31,194, at P 34 (2005), *order denying reh'g and stay*, Order No. 664-A, 114 FERC ¶ 61,142 (2006) (discussing part 45, 18 C.F.R. Pt. 45 (2005)).

not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>34</sup> Thus, consistent with Order No. 664, any of the above-captioned entities who previously sought and were granted waiver of the full requirements of Part 45 will be required henceforth to comply with the full requirements of Part 45.

The Commission orders:

(A) The updated market power analyses discussed above are accepted for filing, as discussed in the body of this order.

(B) The notice of cancellation of North American Energy, L.L.C. is accepted for filing, as discussed in the body of this order.

(C) Monmouth is directed to revise its market-based rate tariff to include the Commission's change in status reporting requirement, within 30 days of the date of issuance of this order, as discussed in the body of this order.

(D) The above-captioned entities are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter, as discussed in the body of this order.

(E) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to the above-captioned entities, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>34</sup> Id. at P 36.